

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SHARON RUTH BROADWAY, #861919,

Petitioner,

v.

CASE NO. 2:15-CV-11917  
HONORABLE PAUL D. BORMAN

ANTHONY STEWART,

Respondent.

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**OPINION AND ORDER DENYING THE PETITION FOR A WRIT OF  
HABEAS CORPUS, DENYING A CERTIFICATE OF APPEALABILITY,  
AND DENYING LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL**

**I. Introduction**

This is a habeas case brought pursuant to 28 U.S.C. § 2254. Michigan prisoner Sharon Ruth Broadway (“Petitioner”) pleaded guilty to maintaining a criminal enterprise, MICH. COMP. LAWS § 750.159i(2), and embezzlement from a financial institution, MICH. COMP. LAWS § 750.180, in the Monroe County Circuit Court. She was sentenced to concurrent terms of 3 years 9 months to 20 years imprisonment and 10 months to 20 years imprisonment in 2013. In her petition, she raises an insufficient evidence claim challenging the validity of her maintaining a criminal enterprise conviction. For the reasons that follow, the Court denies the habeas petition for a writ of habeas corpus. The Court also denies a certificate of appealability and denies leave to proceed in forma pauperis on appeal.

## **II. Facts and Procedural History**

Petitioner's convictions arise from her embezzlement of approximately \$2,000,000 from the United Catholic Credit Union in Temperance, Monroe County, Michigan, during the course of multiple transactions from 2007 to 2012. At the plea hearing, Petitioner admitted that she stole funds, falsified records, parsed ledgers, and omitted deposits to defraud state examiners. She used the stolen money for personal purposes, including starting a family trucking business.

Following her convictions and sentencing, Petitioner filed a delayed application for leave to appeal with the Michigan Court of Appeals raising an insufficient evidence claim and a double jeopardy claim (with a related re-sentencing request). The court denied leave to appeal for lack of merit in the grounds presented. *People v. Broadway*, No. 318095 (Mich. Ct. App. Dec. 4, 2013) (unpublished). Petitioner then filed an application for leave to appeal with the Michigan Supreme Court, which was denied in a standard order. *People v. Broadway*, 495 Mich. 1007, 846 N.W.2d 402 (May 27, 2014). Petitioner dated her federal habeas petition on May 18, 2015 and it was filed by the Court on May 27, 2015. Respondent has filed an answer to the petition contending that it should be denied. Petitioner has not filed a reply to that answer.

## **III. Standard of Review**

Federal law imposes the following standard of review for habeas cases:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings

unless the adjudication of the claim –

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings.

28 U.S.C. § 2254(d).

“A state court’s decision is ‘contrary to’ . . . clearly established law if it ‘applies a rule that contradicts the governing law set forth in [Supreme Court cases]’ or if it ‘confronts a set of facts that are materially indistinguishable from a decision of [the Supreme] Court and nevertheless arrives at a result different from [that] precedent.’”

*Mitchell v. Esparza*, 540 U.S. 12, 15-16 (2003) (per curiam) (quoting *Williams v. Taylor*, 529 U.S. 362, 405-06 (2000)); *see also Bell v. Cone*, 535 U.S. 685, 694 (2002).

“[T]he ‘unreasonable application’ prong of § 2254(d)(1) permits a federal habeas court to ‘grant the writ if the state court identifies the correct governing legal principle from [the Supreme] Court but unreasonably applies that principle to the facts of petitioner’s case.’” *Wiggins v. Smith*, 539 U.S. 510, 520 (2003) (quoting *Williams*, 529 U.S. at 413); *see also Bell*, 535 U.S. at 694. However, “[i]n order for a federal court find a state court’s application of [Supreme Court] precedent ‘unreasonable,’ the state court’s decision must have been more than incorrect or erroneous. The state court’s application must have been ‘objectively unreasonable.’” *Wiggins*, 539 U.S. at 520-21 (citations omitted); *see also Williams*, 529 U.S. at 409. “AEDPA thus imposes a ‘highly deferential

standard for evaluating state-court rulings,’ and ‘demands that state-court decisions be given the benefit of the doubt.’” *Renico v. Lett*, 559 U.S. 766, 773 (2010) (quoting *Lindh*, 521 U.S. at 333, n. 7; *Woodford v. Viscotti*, 537 U.S. 19, 24 (2002) (per curiam)).

The United States Supreme Court has held that “a state court’s determination that a claim lacks merit precludes federal habeas relief so long as ‘fairminded jurists could disagree’ on the correctness of the state court’s decision.” *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (citing *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). The Supreme Court emphasized “that even a strong case for relief does not mean the state court’s contrary conclusion was unreasonable.” *Id.* (citing *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003)). Pursuant to § 2254(d), “a habeas court must determine what arguments or theories supported or . . . could have supported, the state court’s decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision” of the Supreme Court. *Id.* Thus, in order to obtain federal habeas relief, a state prisoner must show that the state court’s rejection of his claim “was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.” *Id.*; see also *White v. Woodall*, \_\_\_ U.S. \_\_\_, 134 S. Ct. 1697, 1702 (2014). “When reviewing state criminal convictions on collateral review, federal judges are required to afford state courts due respect by overturning their decisions only when there could be no reasonable dispute that they were wrong.” *Woods v. Donald*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 1372, 1376 (2015).

Section 2254(d)(1) limits a federal habeas court’s review to a determination of whether the state court’s decision comports with clearly established federal law as determined by the Supreme Court at the time the state court renders its decision. *Williams*, 529 U.S. at 412; *see also Knowles v. Mirzayance*, 556 U.S. 111, 122 (2009) (noting that the Supreme Court “has held on numerous occasions that it is not ‘an unreasonable application of clearly established Federal law’ for a state court to decline to apply a specific legal rule that has not been squarely established by this Court”) (quoting *Wright v. Van Patten*, 552 U.S. 120, 125-26 (2008) (per curiam)); *Lockyer*, 538 U.S. at 71-72. Section 2254(d) “does not require a state court to give reasons before its decision can be deemed to have been ‘adjudicated on the merits.’” *Harrington*, 562 U.S. at 100. Furthermore, it “does not require citation of [Supreme Court] cases—indeed, it does not even require awareness of [Supreme Court] cases, so long as neither the reasoning nor the result of the state-court decision contradicts them.” *Early v. Packer*, 537 U.S. 3, 8 (2002); *see also Mitchell*, 540 U.S. at 16.

The requirements of “clearly established law” are to be determined solely by Supreme Court precedent. Thus, “circuit precedent does not constitute ‘clearly established Federal law, as determined by the Supreme Court,’” and “[i]t therefore cannot form the basis for habeas relief under AEDPA.” *Parker v. Matthews*, 567 U.S. \_\_, 132 S. Ct. 2148, 2155 (2012) (per curiam). Lower federal court decisions, however, may be useful in assessing the reasonableness of the state court’s resolution of an issue. *Stewart v. Erwin*, 503 F.3d 488, 493 (6th Cir. 2007) (citing *Williams v. Bowersox*, 340 F.3d 667,

671 (8th Cir. 2003)); *Dickens v. Jones*, 203 F. Supp. 354, 359 (E.D. Mich. 2002).

Lastly, a state court's factual determinations are presumed correct on federal habeas review. *See* 28 U.S.C. § 2254(e)(1). A petitioner may rebut this presumption with clear and convincing evidence. *Warren v. Smith*, 161 F.3d 358, 360-61 (6th Cir. 1998). Habeas review is "limited to the record that was before the state court." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011).

#### **IV. Analysis**

Petitioner asserts that she is entitled to habeas relief because there was insufficient evidence that she conducted a continuing criminal enterprise. Respondent contends that this claim is waived by her guilty plea and that it otherwise lacks merit. Petitioner raised this claim on direct appeal. The Michigan Court of Appeals denied leave to appeal for "lack of merit in the grounds presented" and the Michigan Supreme Court denied leave to appeal in a standard order.

The state courts' denial of relief is neither contrary to Supreme Court precedent nor an unreasonable application of federal law or the facts.<sup>1</sup> It is well-established that claims about the deprivation of constitutional rights that occur before the entry of a guilty or no contest plea are waived by that plea. *United States v. Broce*, 488 U.S. 563, 569 (1989); *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). The United States Supreme Court has explained:

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<sup>1</sup>The Court would reach the same result under a de novo standard of review.

[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea. . . .

*Tollett*, 411 U.S. at 267. Simply stated, a defendant who pleads guilty or no contest generally waives any non-jurisdictional claims that arose before his or her plea. In such a case, the court's inquiry is limited to whether the plea was knowing, intelligent, and voluntary. *Broce*, 488 U.S. at 569. By pleading guilty, Petitioner has waived her right to challenge the sufficiency of the evidence to convict her of the charges. Her sufficiency of the evidence claim is foreclosed by her plea. *See Broce*, 488 U.S. at 569; *Tollett*, 411 U.S. at 267; *United States v. Ormsby*, 252 F.3d 844, 848 (6th Cir. 2001) (unconditional plea waives non-jurisdictional collateral challenge to the sufficiency of the evidence); *see also David v. McQuiggin*, No. 09-14912, 2011 WL 2174897, \*5 (E.D. Mich. June 3, 2011) (Duggan, J., denying habeas relief on similar claim).

Additionally, to the extent that Petitioner challenges the state courts' construction or application of Michigan law, *i.e.*, the maintaining a criminal enterprise statute, she is not entitled to habeas relief. It is well-settled that "a state court's interpretation of state law, including one announced on direct appeal of the challenged conviction, binds a federal court sitting on habeas review." *Bradshaw v. Richey*, 546 U.S. 74, 76 (2005); *see also Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975) (state courts are the final arbiters of state law); *Sanford v. Yukins*, 288 F.3d 855, 860 (6th Cir. 2002). Petitioner thus fails to

state a claim upon which habeas relief may be granted as to any such issue.

Lastly, to the extent that Petitioner asserts that her guilty plea is not supported by a sufficient factual basis, she is not entitled to habeas relief. Under Michigan law, before a trial court may accept a criminal defendant's plea, "the court, by questioning the defendant, must establish support for a finding that the defendant is guilty of the offense charged or the offense to which the defendant is pleading." Mich. Ct. R. 6.302(D)(1). A violation of a state law procedural rule, however, does not provide a basis for federal habeas relief. *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991). Moreover, there is no federal constitutional requirement that a factual basis be established to support a guilty plea. *See North Carolina v. Alford*, 400 U.S. 25, 37 (1970) ("An individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime."); *United States v. Tunning*, 69 F.3d 107, 111 (6th Cir. 1995); *see also Bonior v. Conerly*, 416 F. App'x 475, 478 (6th Cir. 2010) ("[t]here is no constitutional requirement that a trial judge inquire into the factual basis of a plea" and affirming denial of habeas relief). Petitioner thus fails to state a claim upon which habeas relief may be granted as to this issue. Habeas relief is not warranted.

## V. Conclusion

For the reasons stated, the Court concludes that Petitioner is not entitled to federal habeas relief on the claim contained in her petition. Accordingly, the Court **DENIES WITH PREJUDICE** the petition for a writ of habeas corpus.

Before Petitioner may appeal the Court's decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a court denies relief on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the court's assessment of the constitutional claim debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). When a court denies relief on procedural grounds, a certificate of appealability should issue if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Id.*

Having considered the matter, the Court concludes that Petitioner fails to make a substantial showing of the denial of a constitutional right as to her habeas claim and that reasonable jurists could not debate the correctness of the Court's ruling. Accordingly, the Court **DENIES** a certificate of appealability. The Court also **DENIES** leave to proceed in forma pauperis on appeal as an appeal cannot be taken in good faith. *See* Fed. R. App. P. 24(a). This case is closed.

**IT IS SO ORDERED.**

s/Paul D. Borman

PAUL D. BORMAN

UNITED STATES DISTRICT JUDGE

Dated: April 22, 2016

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on April 22, 2016.

s/Deborah Tofil

Case Manager